



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

APR 21 2011

201128036

*Uniform Issue List: 401.06-00*

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SE:T:EP:RA:T2

**Legend:**

Taxpayer A	=	***
Taxpayer B	=	***
Decedent D	=	***
Estate E	=	***
County S	=	***
State M	=	***
IRA A	=	*** ***
IRA I	=	*** *** ***
Company R	=	***
Company C	=	***
Age A	=	***
Age B	=	***
Age D	=	***

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Date 1 = \*\*\*

**201128036**

Date 2 = \*\*\*

Date 3 = \*\*\*

Will W = \*\*\*  
\*\*\*

Dear \*\*\*:

This is in response to your request dated June 29, 2010, in which you, in your capacity as the personal representative of Estate E, request a ruling under section 401(a)(9) of the Internal Revenue Code (the "Code") concerning the transfer and treatment of a beneficiary's interest in an IRA after the death of the IRA owner.

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested. Taxpayer A, Age A and Taxpayer B, Age B (hereinafter "Taxpayers"), are the children of Decedent D, who died on Date 1, 2008, at Age D. Decedent D was survived by her two children, the Taxpayers.

Decedent D died testate, with her estate, Estate E, being administered in accordance with Will W. In accordance with Paragraph 5 of Will W, Taxpayer A was appointed as personal representative of Estate E ("Personal Representative") and was granted letters of administration on Date 2, 2008, by the probate court of County S in State M.

Decedent D's non-IRA estate has been distributed outright to her heirs, Taxpayers A and B, in equal shares.

As of the date of her death, Decedent D was the owner of IRA A, which was held by Company R. Decedent D designated her estate as sole beneficiary of IRA A. Accordingly, Estate E is the beneficiary of IRA A and as such IRA A was transferred to IRA I, held by Company C in Date 3, 2009. In accordance with Paragraph 8 of Will W, Taxpayer A and Taxpayer B are entitled to equal one-half shares of the proceeds IRA A, as it is part of Decedent D's residual estate.

In her capacity as Personal Representative, Taxpayer A intends to divide IRA I into two equal one-half shares; one for Taxpayer A and one for Taxpayer B, respectively. This will be accomplished by means of a series of trustee-to-trustee transfers, into two distinct "sub-IRAs," each established as an inherited IRA. Each such inherited IRA will be maintained in the name of Decedent D for the benefit of one of the Taxpayers as a beneficiary of Decedent D's estate. For instance, it is proposed that one sub-IRA will be maintained by Company C in the name of Decedent D for the benefit of Taxpayer A as beneficiary of Decedent D's estate. Each sub-IRA created as a result of the division of IRA I will receive a pro-rata share of all earnings and interest calculated up to the date of transfer, which is expected to occur in 2010.

Furthermore, it is intended that the two resulting inherited IRAs will make distributions intended to meet the minimum distribution requirements of section 401(a)(9) of the Code based on Decedent D's remaining life expectancy. The distributions are to be made from each of the two transferee sub-IRAs and will begin during 2010.

Taxpayer A asserts that as of the date of her ruling request, the funds in IRA I remain undistributed except that the required minimum distributions that were made with respect to 2008. Taxpayer further asserts that the required minimum distributions for IRA I were waived with respect to 2009.

Based on the facts and representations, you request the following rulings:

1. That the sub-IRA created for Taxpayer A by means of a trustee-to-trustee transfer ("Beneficiary IRA"), which will be maintained in the name of Decedent D for the benefit of Taxpayer A, beneficiary of Decedent D's estate, will constitute an inherited IRA as such term is defined in section 408(d)(3)(C) of the Code;
2. That the trustee-to-trustee transfer, pursuant to Revenue Ruling 78-406, of Taxpayer A's one-half interest in IRA I to a Beneficiary IRA in Decedent D's name for the benefit of Taxpayer A as beneficiary of Decedent D's estate will not constitute a distribution within the meaning of section 408(d)(1) of the Code, nor will it be considered an attempted rollover from IRA I into the Beneficiary IRA set up to benefit for Taxpayer A;
3. That Taxpayer A's one-half interest of IRA I can be segregated and held in a separate inherited Beneficiary IRA for purposes of determining the minimum required distributions under section 401(a)(9) of the Code; and
4. That the minimum required distribution requirements under section 401(a)(9) of the Code concerning the Beneficiary IRA set up for the benefit of Taxpayer A may be met by distributing amounts annually from such IRA calculated by using Decedent D's remaining life expectancy using the age of Decedent D as of her birthday in the calendar year of her death, reduced by one for each subsequent calendar year in accordance with Section 1.401(a)(9)-5 of the Final Income Tax Regulations, Question and Answer 5.

With respect to your first ruling request, section 408(d)(1) of the Code provides, generally, that in accordance with the rules of section 72 of the Code, amounts paid or distributed from an IRA are included in gross income by the payee or distributee. In addition, section 408(d)(3)(C)(ii) of the Code provides that an IRA will be considered an "inherited" IRA if the IRA is maintained by a person who acquired the IRA by reason of the death of another individual and was not the surviving spouse of such individual.

Pursuant to the facts represented herein, Taxpayer A, who was not Decedent D's spouse, will acquire her Beneficiary IRA by virtue of the Decedent D's death.

Accordingly, to the extent the Beneficiary IRA is considered an IRA, it will constitute an "inherited" IRA within the meaning of such term under section 408(d)(3)(C) of the Code.

With respect to your second ruling request, section 408(d)(3)(C) of the Code provides that, in general, amounts from an "inherited" IRA cannot be rolled over into another IRA.

Revenue Ruling 78-406, 1978-2 C.B. 157 provides that the direct transfer of funds from one IRA trustee to another IRS trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in section 408(d) of the Code and does not constitute a rollover distribution.

Revenue Ruling 78-406 is applicable if the trustee-to-trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

Thus, with respect to your second ruling request, the proposed trustee-to-trustee transfer to be used to establish the Beneficiary IRA set up to benefit Taxpayer A will not, pursuant to the above-referenced Revenue Ruling 78-406, constitute a taxable payment or distribution, within the meaning of section 408(d) of the Code, to Taxpayer A, and also will not be considered an attempted rollover from IRA A into the Beneficiary IRA set up to benefit Taxpayer A.

With respect to your third ruling request, two distinct Beneficiary IRAs will be set up: one to benefit Taxpayer A, and one to benefit Taxpayer B. Each IRA will hold assets transferred from IRA I maintained by the estate of Decedent D as of her death. While nothing in the Code or Income Tax Regulations promulgated thereunder precludes the two Beneficiary IRAs to be set up separately to benefit Taxpayer A and Taxpayer B, respectively, the Regulations do preclude "separate account" treatment for purposes of section 401(a)(9) of the Code.

On April 17, 2002, Final Income Tax Regulations ("Regulations") were published in the Federal Register with respect to sections 401(a)(9) and 408(a)(6) of the Code. (See also, 2002-19 I.R.B. 852, May 13, 2002). Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code and that in order to satisfy section 401(a)(9) of the Code for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of section 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Regulations must be applied, except as otherwise provided.

Section 1.401(a)(9)-8, Question and Answer 2(a) of the Regulations contains the "separate account" rules as applied to defined contribution plans. A "separate account"

is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of other accounts. In general, if separate accounts are established, for years subsequent to the calendar year containing the date on which the separate accounts were established (or the date of death, if later), a separate account under a plan/IRA is not aggregated with the other separate accounts under the plan/IRA in order to determine whether the distributions from such separate account satisfy the requirements of section 401(a)(9) of the Code. Rather, the rules in section 401(a)(9) of the Code apply separately to each separate account under the plan/IRA.

Section 1.401(a)(9)-8, Question and Answer 3 of the Regulations provides that a separate account is a separate portion of an employee's/IRA holder's benefit reflecting the separate interest of the employee's/IRA holder's beneficiaries under the plan/IRA as of the date of the employee's/IRA holder's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts, on a pro-rata basis in a consistent and reasonable manner among the separate accounts. Section 1.401(a)(9)-4, Question and Answer 5(c) of the Regulations provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

Accordingly, the Beneficiary IRA to be created by means of a trustee-to-trustee transfer of a portion of IRA I to an IRA established in Decedent D's name and maintained by Company C for the benefit of Taxpayer A may be maintained separately from the IRA to be established by means of a trustee-to-trustee transfer of a portion of IRA I to the IRA established in the name of Decedent D and maintained by Company B for the benefit of Taxpayer A. This conclusion assumes that the Beneficiary IRA will be titled in the following format, "Decedent D (deceased) for the benefit of Taxpayer A, as beneficiary of Decedent D's estate."

With respect to your fourth ruling request, section 408(a)(6) of the Code provides that under regulations prescribed by the Secretary rules similar to the rules of section 401(a)(9) of the Code shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 401(a)(9)(A) of the Code provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that the entire interest of each employee/IRA holder will be distributed to such employee/IRA holder not later than the required beginning date, or will be distributed, beginning not later than the required beginning date, in accordance with Regulations, over the life of such employee/IRA holder or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee/IRA holder or the life expectancy of such employee/IRA holder and a designated beneficiary).

Section 401(a)(9)(B)(i) of the Code provides, in general, that if an employee/IRA holder dies after distribution of his interest has begun in accordance with section 401(a)(9)(A)(ii) (after his required beginning date), the remaining portion of his interest

must be distributed at least as rapidly as under the method of distribution being used as of the date of his death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that for purposes of section 401(a)(9), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee/IRA holder attains age 70 and  $\frac{1}{2}$ .

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 3, states that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person that is not an individual, such as the employee's/IRA holder's estate, may not be a designated beneficiary.

Section 1.401(a)(9)-4 of the Regulations, Question and Answer 4(a), provides that in order to be a designated beneficiary, that beneficiary must be a beneficiary as of the date of the employee's/IRA holder's death. The designated beneficiary will generally be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

With further respect to your fourth ruling request, section 1.401(a)(9)-5, Question and Answer 5(a) of the Regulations provides, in part, that if an employee/IRA holder dies on or after his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's/IRA holder's date of death is either – (1) if the employee/IRA holder has a designated beneficiary as of the date determined under Section 1.401(a)(9)-4, Question and Answer 4, the longer of (i) the remaining life expectancy of the employee's/IRA holder's designated beneficiary determined in accordance with paragraphs (c)(1) or (c)(2) of Question and Answer 5, and (ii) the remaining life expectancy of the employee/IRA holder determined in accordance with paragraph (c)(3) of Question and Answer 5, or (2) if the employee/IRA holder has no designated beneficiary as of the date determined under Section 1.401(a)(9)-4, Question and Answer 4, the remaining life expectancy of the employee/IRA holder as determined under Section 1.401(a)(9)-5, Question and Answer 5(c)(3).

Section 1.401(a)(9)-5, Question and Answer 5(c)(3) of the Regulations provides, in general, that with respect to an employee/IRA holder that does not have a designated beneficiary, the applicable distribution period measured by the employee's/IRA holder's remaining life expectancy is the life expectancy of the employee/IRA holder using the age of the employee/IRA holder as of the employee's/IRA holder's birthday in the calendar year of the employee's/IRA holder's death. The applicable distribution is reduced by one for each subsequent calendar year that has elapsed after the calendar year of the employee's/IRA holder's death.

The relevant Single Life Table for determining life expectancy is provided in Section 1.401(a)(9)-9, Question and Answer 1 of the Regulations.

Section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code.

As noted above, Decedent D died after her required beginning date for her required minimum distributions under section 401(a)(9). Furthermore, because she did not list a beneficiary for IRA A, Decedent D's estate was the beneficiary of IRA A. In addition, pursuant to Paragraph 8 of the Will W, Taxpayers A and B are each entitled to one-half equal share's of Decedent D's residual estate, which included IRA A, the proceeds of which were later transferred to IRA I. Accordingly, there is no designated beneficiary with respect to IRA I.

As further noted above, section 1.408-8 of the Regulations, Question and Answer 1(a) provides, in part, that IRAs are subject to the required minimum distribution rules under section 401(a)(9) of the Code. Accordingly, the minimum distribution requirements under section 401(a)(9) of the Code may be met with respect to Taxpayer A's Beneficiary IRA by distributing amounts annually to Taxpayer A from the Beneficiary IRA, computed using Decedent D's remaining life expectancy using the age of Decedent (Age D), as of Decedent D's birthday in the calendar of Decedent D's death and using Single Life Table 1 as provided in section 1.401(a)(9)-9 of the Regulations, Question and Answer 1, beginning with calendar year 2010 and continuing each calendar year thereafter.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or Regulations, which may be applicable hereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \*\*\*\*\* at  
(\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC:     \*\*\*  
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